IN THE HIGH COURT OF JUDICATRE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.2780/2003
Bihari Lal Modi & Ors. V/s L.I.C. of India

Date of Order : 6th September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr.Sudesh Bansal, for the appellants.
Mr.Vizzy Agarwal, for the respondent.

By Court:

The appellants have challenged the Order dated 15.9.2003 passed by the Additional District Judge, No.5, Jaipur City, Jaipur whereby the application filed by the appellants under Order 9 Rule 13 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short) was dismissed.

The brief facts of the case are that the respondent, Life Insurance Corporation (henceforth to be referred to as 'the L.I.C., for short) had filed a suit for recovery of the loan, which was given to one Bihari Lal Modi, father of the appellant. The L.I.C. had granted a loan to him in the year 1987-88. Although, Bihari Lal Modi had expired on

1994, the suit was filed against him in the year 1997. Subsequently, when the fact of his death was noticed, the legal representatives of the deceased were made a party to the suit for recovery. However, the service on the legal representatives allegedly was not properly done. But nonetheless, the learned trial court proceeded ex-parte and eventually passed an ex-parte judgment against them. When it came to the appellants' notice that an ex-parte order has been passed against them, they moved an application under Order 9 Rule 13 of C.P.C. After hearing both the parties, vide order dated 15.9.2003, the learned court dismissed the said application.

Both the learned counsels state that a compromise has been reached between the parties. According to the learned counsel for the appellant and according to the judgment and decree, the principal amount had to be paid along with 15% per annum. However, the appellant has paid the principal amount along with the interest @ 12% per annum. The payment of the said amount along with the interest @ 12% has been accepted by the L.I.C. as full and final payment of the loan. Therefore, according to the compromise entered into between the parties, the said loan has been satisfied.

In the light of the fact that both the parties have entered into a compromise and the L.I.C. has already been paid the loan amount by the appellant as full and final payment, the due is deemed to be satisfied.

Mr. Vizzy Agarwal, the learned counsel for the respondent – L.I.C., states that the appellant had deposited a banker's cheque of Rs.3,59,000/- with the Executing Court. Therefore, we direct the Executing Court to release the said amount to the L.I.C. Moreover, the title deed of the property of the appellant are with the L.I.C., considering the satisfaction of the loan amount, the L.I.C. is directed to return the title deed of the property of the appellant within a period of one month, from the date of the receipt of the certified copy of this order.

An undertaking has also been given by the L.I.C. that they will drop the criminal proceeding pending against the appellant. The said undertaking shall be taken on record and it is hoped that the said undertaking would be implemented by the L.I.C. at the earliest.

With these observations, this appeal is disposed of.

(R.S. CHAUHAN), J.

/S.S./